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No. 22,194

United States Court of Appeals
For the Ninth Circuit

SEQUOIA MACHINERY, INC., a Corporation,
and KAWEAH COMPANY, a Corporation,
Appellants,

vs.

J. RODERICK JARRETT, Trustee of the Estate
of James C. Clark, Bankrupt,
Appellee.

AMICUS CURIAE BRIEF OF
CALIFORNIA EQUIPMENT DEALERS ASSOCIATION,
A CORPORATION

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Topical Index

	Page
I. Summary of Argument	1
II. Argument	2
1. There is Patent Ambiguity in the Language of Section 9401 of the Commercial Code	2
2. The Burden of Resolving the Ambiguity is Placed Upon the Seller of Equipment	4
3. The California Commercial Code Announces a Purpose and Policy of Enforcing the Validity of Security Transactions	6
4. The Rules of Statutory Construction and Interpretation Require a Policy of Enforcing Security Transactions	8
III. Conclusion	11

Table of Authorities Cited

Cases	Pages
East Bay Garbage Co. v. Washington Township Sanitation Company, 52 Cal. 2d 708 (1959)	8
Estate of Jacobs, 100 Cal. App. 2d 452 (1950)	8, 9
Estate of Wyman, 208 Cal. App. 2d 489 (1962)	8
Ivens v. Simon, 212 Cal. App. 2d 177 (1963)	8, 9
Moeser v. County of San Diego, 227 Cal. App. 2d 563 (1964)	9
People v. Hodgdon, 55 Cal. 72 (1880)	9

Codes	
Commercial Code:	
Division 9	6
Section 1102	7
Section 9401	2, 11
Section 9401(1)	10, 11
Section 9401(1)(a)	1, 2, 4, 9, 10
Section 9401(1)(c)	1

Texts	
Vol. III, California Commercial Law (California Continuing Education of the Bar):	
Chapter 5, p. 258	3
Chapter 5, p. 259	3
Chapter 10, p. 506	4
Uniform Commercial Code Comment:	
Section 1102	7
Section 9101	2, 6
West's Annotated California Commercial Code, Vol. 23A, pp. 13, 14	7
West's Annotated California Commercial Code, Vol. 23C, p. 303	6

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I

SUMMARY OF ARGUMENT

Section 9401 (1) (a) of the California Commercial Code requires financing statements to be filed locally when the collateral is “equipment used in farming operations.” Section 9401 (1) (c) provides for central filing with the Secretary of State “in all other cases.”

The code provides no definitions or other machinery for determining when equipment is “equipment used in farming operations.” Dealers in equipment of various types are required under the code to interpret

the meaning of the language "equipment used in farming operations" in order to properly file.

There is need for judicial clarification of the language "equipment used in farming operations." There is need for definitions or guidelines to assist dealers in equipment to determine when equipment is of the type referred to in Section 9401 (1) (a) of the California Commercial Code.

Until such time as adequate guidelines have been established, justice and fairness, the purposes and policies of the California Commercial Code, and the rules of statutory construction and interpretation require a decision that security agreements will be enforced if there has been a reasonable and good faith attempt on the part of the dealer to determine if the collateral was or was not "equipment used in farming operations," and to file in the proper place.

II

ARGUMENT

1. THERE IS PATENT AMBIGUITY IN THE LANGUAGE OF SECTION 9401 OF THE COMMERCIAL CODE.

Section 9401 (1) (a) of the California Commercial Code provides that the proper place for filing "when the collateral is equipment used in farming operations" is in the office of the county recorder. However, no place in the California Commercial Code, or in the Uniform Commercial Code, upon which the California act is based, is there set forth any definition or guidelines for determining when equipment is "equipment

used in farming operations.” There is nothing in the official Code Comments by way of definition. There is no help to be found in the general law or by way of precedent.

That serious questions exist is best evidenced by the very matters presented in the case on appeal; by the issues raised by amicus curiae, Allis-Chalmers Manufacturing Company; and by the Affidavit in Support of Motion for Leave to File Amicus Curiae Brief, signed by executive officers of the California Equipment Dealers Association (Exhibit “B” of exhibits filed in support of Motion for Leave to File Amicus Curiae Brief).

Even the authors of textbooks on the California Commercial Code appear to be puzzled by the language “equipment used in farming operations.” In Volume III, California Commercial Law (California Continuing Education of the Bar), the following language appears:

“When the transaction is made to consumers *or by farmers*, or the collateral is crops or timber connected to real property, local filing is required.”¹ (Emphasis added).

“Local filing is proper for equipment used in farming operations. The *code contains no definition of farming operations*, but Section 9-109, Comment (4), states that ‘farming operations’ includes *raising livestock as well as crops*.”² (Emphasis added).

¹Volume III, California Commercial Law (California Continuing Education of the Bar), chapter 5, page 258.

²Volume III, California Commercial Law (California Continuing Education of the Bar), chapter 5, page 259.

“The code defines equipment but gives no special definition of farm equipment. Based on the general definition, farm equipment is equipment used or bought for use primarily in the *business of farming*.”³ (Emphasis added).

Counsel for Appellee apparently appreciates that ambiguity is a problem. On page 9 of Appellee’s Brief it states as follows:

“The trustee does not suggest that the class of goods provided in Section 9401 (1) (a) is altogether free from problems in its application. There will be many circumstances where its application will be ambiguous for years.”

2. THE BURDEN OF RESOLVING THE AMBIGUITY IS PLACED UPON THE SELLER OF EQUIPMENT.

Because the code does not adequately set forth when equipment is to be considered “equipment used in farming operations”; and because the seller is charged with the responsibility of filing in the proper place; in each individual transaction there falls upon the seller the burden of interpreting the meaning of Section 9401 (1) (a), and the burden of deciding what is the proper place to file the financing statement.

It is to be noted that this burden is placed upon the seller without invitation or request by him.

Counsel for Appellee notes that there are circumstances when the dealer must investigate and deter-

³Volume III, California Commercial Law (California Continuing Education of the Bar), chapter 10, page 506.

mine the nature of the purchaser's business.⁴ Counsel for Appellee further, very candidly, points out that the problems of ascertaining the use of certain types of equipment would be the same under either the interpretation urged by Appellants or the interpretation urged by Appellee.⁵

The types of transactions which would require the individual interpretation of the dealer as to whether the collateral is "equipment used in farming operations" are too numerous for any attempt to describe each possible situation that might arise; however, the following are examples of the range of possible transactions:

1. A dealer sells equipment, normally used in farm work, to a farmer who works only his own farm;
2. A dealer sells equipment, normally used in farm work, to a farmer who works his own farm and contracts work for other farmers;
3. A dealer sells equipment, normally used in farm work, to a purchaser who does no farming, but contracts out the use of his equipment;
4. A dealer sells equipment, normally not used in farm work, to one who is a farmer and has no other business;
5. A dealer sells equipment, normally not used in farm work, to one who both farms his own farm and contracts business out;

⁴Appellee's Brief, page 8.

⁵Appellee's Brief, page 9.

6. A dealer sells equipment, normally not used in farm work, to one who contracts work for others who are farmers;
 7. A dealer sells equipment that can be used for both farm and non-farm work to one who works only his own farm;
 8. A dealer sells equipment that can be used for both farm and non-farm work to one who owns and operates a farm but is also in the construction business;
 9. A dealer sells equipment that can be used for both farm and non-farm work to one who is in the construction business; but to make ends meet, is not above contracting out the use of his equipment to farmers, during his off season.
-

3. THE CALIFORNIA COMMERCIAL CODE ANNOUNCES A PURPOSE AND POLICY OF ENFORCING THE VALIDITY OF SECURITY TRANSACTIONS.

Division 9 of the California Commercial Code sets forth the law pertaining to secured transactions. The Uniform Commercial Code Comment under Sec-9101, states that "the aim of this Article is to provide a simple and unified structure within which the immense variety of present-day secured financing transactions can go forward with less cost and with greater certainty."⁶

⁶West's Annotated California Commercial Code, Volume 23C, page 303.

Section 1102 of the California Commercial Code, provides in part as follows:

“(1) This code shall be liberally construed and applied to promote its underlying purposes and policies.”

“(2) Underlying purposes and policies of this code are

(a) To simplify, clarify and modernize the law governing commercial transactions;

(b) *To permit the continued expansion of commercial practices* through custom, usage and agreement of the parties;

(c) To make uniform the law among the various jurisdictions.” (Emphasis added).

The Uniform Commercial Code Comment under Section 1102, states as follows:

“1. Subsections (1) and (2) are intended to make clear that:

This Act is drawn to provide flexibility so that, since it is intended to be a semi-permanent piece of legislation, it will provide its own machinery for expansion of commercial practices. *It is intended to make it possible for the law embodied in this Act to be developed by the courts in the light of unforeseen and new circumstances and practices.* However, *the proper construction of the Act requires that its interpretation and application be limited to reason.*” (Emphasis added).

“The Act should be construed in accordance with its underlying purposes and policies.”⁷

⁷West’s Annotated California Commercial Code, Volume 23A, pages 13 and 14.

It is obvious that the California Commercial Code was adopted with a legislative intent of expanding commercial transactions and of upholding their validity, rather than with an intent of placing restrictions thereon.

It is also obvious that the legislative intent was for judicial decisions upholding the validity of security transactions whenever reasonable to do so.

4. **THE RULES OF STATUTORY CONSTRUCTION AND INTERPRETATION REQUIRE A POLICY OF ENFORCING SECURITY TRANSACTIONS.**

There are certain basic and elementary principles which should be considered by the Court when called upon to interpret and apply legislation.

Foremost among these basic principles is the requirement that if a statute is ambiguous it should be so construed as to render a result that would not negate its purpose.⁸

Second, whenever possible, "a statute should be construed to reach a result that is *reasonable*; and that a construction which will lead to absurd, unfair and unjust consequences should not be given if it can be avoided."⁹

⁸*East Bay Garbage Co. v. Washington Township Sanitation Company*, 52 Cal. 2d 708, (1959);

Ivens v. Simon, 212 Cal. App. 2d 177, (1963);

Estate of Wyman, 208 Cal. App. 2d 489, (1962);

Estate of Jacobs, 100 Cal. App. 2d 452, (1950).

⁹*Estate of Jacobs*, 100 Cal. App. 2d 452, at page 458, (1950);

Ivens v. Simon, 212 Cal. App. 2d 177, (1963);

Estate of Wyman, 208 Cal. App. 2d 489, (1962).

Third, when a statute is ambiguous, it should be construed so as not to deprive the person interested of a substantial right.¹⁰

Finally, consideration must be given to the consequences that will result from a particular interpretation; with a view toward avoiding unjust and unnecessary or absurd hardships.¹¹

Having in mind the above principles of statutory construction, amicus curiae respectfully asks that the Court consider the following matters:

1. Because of the various complexities involved in each individual transaction, different interpretations have arisen among businessmen as to when collateral was "equipment used in farming operations." The dilemma is clearly evidenced by the case on appeal, by the matter presented by Allis-Chalmers Manufacturing Company, and by the affidavit filed by the executive officers of the California Equipment Dealers Association.

2. The position taken by Appellants, and their reasons for interpreting Section 9401 (1) (a) as they did, are both impressive and reasonable.

3. By the same token, the position taken by Appellee and by Allis-Chalmers, and their reasons for interpreting Section 9401 (1) (a) as they did are equally as impressive and reasonable.

¹⁰*Estate of Jacobs*, 100 Cal. App. 2d 452, (1950);
People v. Hodgdon, 55 Cal. 72, (1880).

¹¹*Moeser v. County of San Diego*, 227 Cal. App. 2d 563, (1964);
Ivens v. Simon, 212 Cal. App. 2d 177, (1963);
Estate of Jacobs, 100 Cal. App. 2d 452, (1950).

4. Should the Court, in rendering its decision, adopt one interpretation to the exclusion of the other, the consequences will render untold hardships on those dealers and businessmen who, having no other guidelines to go by, interpreted Section 9401 (1) (a) differently.

5. Should the Court, in rendering its decision, adopt one interpretation to the exclusion of the other, the consequences will result in the voiding of numerous security transactions which are otherwise valid. Surely this would defeat the very purpose of the California Commercial Code, which is to expand such transactions and to make the same secure.

6. It is respectfully submitted that the legislature, in placing upon the dealer or businessman the burden of determining when collateral was "equipment used in farming operations," without setting forth guidelines therefor, must have intended that any reasonable and good faith attempt by the dealer to determine if the equipment was "used in farming operations" and to file in the proper place, would be in compliance with the filing requirements of Section 9401 (1).

7. It is further respectfully submitted that such a decision by the Court, should render effective the security transaction effected by Appellant in the case before the Court; should render effective the security transactions mentioned and referred to by Allis-Chalmers; should render effective the security transactions of all dealers and businessmen who in good faith have reasonably attempted to comply with the filing requirements of Section 9401 (1); and should be con-

sistent with the expressed purposes and policies of the California Commercial Code.

CONCLUSION

For all of the reasons set forth herein, amicus curiae respectfully requests that the Court give consideration to the following factors:

1. The need for a definition of, or guidelines for determining, the meaning of the language "equipment used in farming operations" as contained in Section 9401 (1) of the California Commercial Code, insofar as future transactions may be concerned;

2. Insofar as past transactions are concerned, the just and fair consequences of a decision to the effect that all good faith and reasonable attempts to determine if the collateral was or was not "equipment used in farming operations" and to comply with the filing requirements of Section 9401 shall be deemed valid and enforceable for the purpose of protecting the security interest involved.

Respectfully submitted,

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California Equipment

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CERTIFICATION

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the Rules of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with said rules.

ROBERT P. LONG.

Attorney for Amicus Curiae.